

REMARKS

The present Amendment is in response to the Office Action. By this paper, claims 1, 22, and 23 are amended and new claims 24-27 are added. Support for the claim amendments and new claims may be found at least in paragraphs [0044] through [0047] of the application. Claims 1-9 and 22-27 are now pending in view of the above amendments (claims 10-21 having been canceled by previous amendment).

Reconsideration of the application is respectfully requested in view of the above amendments to the claims and the following remarks. For the Examiner's convenience and reference, Applicants' remarks are presented in the order in which the corresponding issues were raised in the Office Action.

I. General Considerations

Applicants note that the remarks and amendments presented herein have been made merely to clarify the claimed embodiments from elements purported by the Examiner to be taught by the cited references. Such remarks, or a lack of remarks, and amendments are not intended to constitute, and should not be construed as, an acquiescence, on the part of the Applicants: as to the purported teachings or prior art status of the cited references; as to the characterization of the cited references advanced by the Examiner; or as to any other assertions, allegations or characterizations made by the Examiner at any time in this case. Applicants reserve the right to challenge the purported teaching and prior art status of the cited references at any appropriate time.

In addition, the remarks herein do not constitute, nor are they intended to be, an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed herein are presented solely by way of example. Consistent with the foregoing, the discussion herein is not intended, and should not be construed, to prejudice or foreclose contemporaneous or future consideration, by the Applicants, of additional or alternative distinctions between the claims of the present application and any references cited by the Examiner, and/or the merits of additional or alternative arguments.

II. Rejection Under 35 U.S.C. § 103

The Examiner rejects claims 1, 2, 4, and 5 under 35 U.S.C. § 103 as being unpatentable over United States Patent No. 5,850,388 to *Anderson et al.* (“*Anderson*”) in view of United States Patent No. 6,975,963 to *Hamilton et al.* (“*Hamilton*”); rejects claims 3 and 6-9 under 35 U.S.C. § 103 as being unpatentable over *Anderson* and *Hamilton*, and further in view of U.S. Patent No. 6,327,677 to *Garg et al.* (“*Garg*”); rejects claim 22 under 35 U.S.C. § 103 as being unpatentable over *Anderson* and *Hamilton*, and further in view of U.S. Patent No. 6,600,720 to *Gvozdanovic et al.* (“*Gvozdanovic*”); and rejects claim 23 under 35 U.S.C. § 103 as being unpatentable over *Anderson* in view of U.S. Patent No. 5,623,598 to *Voigt et al.* (“*Voigt*”) and *Hamilton*. Applicants respectfully disagree. However, in light of the following remarks the rejection is rendered moot and should be withdrawn.

Under 35 U.S.C. §103(a), “[a] patent may not be obtained . . . if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” According to MPEP §2142, “[t]he examiner bears the initial burden of factually supporting any prima facie conclusion of obviousness. If the examiner does not produce a prima facie case, the applicant is under no obligation to submit evidence of nonobviousness.” Moreover, the Examiner must establish that the references teach or suggest each and every claim element or explain “why the difference(s) between the prior art and the claimed invention would have been obvious.”¹

Claims 1 and 23 have each been amended to recite “determining [a] network topology from loop primitives in [a] data trace.” The Examiner identified a “station list array” in *Anderson* as the claimed network topology. *See Office Action*, pp. 2 and 6 (citing *Anderson* at col. 11, lines 57-67). However, according to *Anderson*, the station list array is formed by determining “whether there is an entry corresponding to [a] destination address of [a] frame in the station list array.” *See Anderson*, col. 11, lines 33-35. “If there is no entry...an entry corresponding to the destination address is created....” *See id.* Composing a list of stations in a

¹ MPEP §2143.03 (“All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970.”); MPEP §2141.III (“The prior art reference (or references when combined) need not teach or suggest all the claim limitations, however, *Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art.*”) (Emphasis added.)

network in the manner described by *Anderson* does not constitute, “determining the network topology from loop primitives in the data trace,” as claimed.

Hamilton, relied on for its purported teachings relative to displaying network analysis information, and *Voigt*, relied on for its purported teachings relative to exchange completion time metrics, fail to cure the deficiencies of *Anderson*. Therefore, no *prima facie* case of obviousness exists with respect to claims 1 and 23, as amended. Accordingly, Applicants respectfully submit that the rejection of claims 1 and 23, and corresponding dependent claims 2, 4, and 5, should be withdrawn.

Claims 3, 6-9, and 22 depend from, and therefore include each and every limitation of, base claim 1. *Garg* and *Gvozdanovic*, relied on for their purported teachings relative to dependent claims, fail to cure the deficiencies of *Anderson* discussed above. Accordingly, Applicants respectfully submit that claims 3, 6-9, and 22 are in condition for allowance at least by virtue of their dependence from allowable claim 1.

III. New Claims 24-27

As shown above, Applicant has added new claims 24-27. Applicants respectfully submit that claims 24 and 25 are allowable over the cited art at least by virtue of their dependence from allowable claim 1. Applicants further submit that claims 26 and 27 are in condition for allowance.

CONCLUSION

In view of the foregoing, Applicants believe the claims as amended or presently pending are in allowable form and that every issue raised by the Office Action has been addressed. In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, or which may be overcome by an Examiner's Amendment, the Examiner is requested to contact the undersigned attorneys.

The Commissioner is hereby authorized to charge payment of any of the following fees that may be applicable to this communication, or credit any overpayment, to Deposit Account No. 23-3178: (1) any filing fees required under 37 CFR § 1.16; and/or (2) any patent application and reexamination processing fees under 37 CFR § 1.17; and/or (3) any post issuance fees under 37 CFR § 1.20. In addition, if any additional extension of time is required, which has not otherwise been requested, please consider this a petition therefor and charge any additional fees that may be required to Deposit Account No. 23-3178.

Dated this 26th day of February, 2009.

Respectfully submitted,

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